

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

John B. Genovese
Amateur Radio Station
WB5LOC

NAL/Acct. No. 315OR0004

ORDER

Adopted: June 30, 1995;

Released: July 10, 1995

By the Chief, Compliance and Information Bureau:

I. INTRODUCTION

1. Mr. John B. Genovese (Petitioner) filed a Petition for Reconsideration, seeking review of the monetary forfeiture of \$2,000 issued under authority of Section 503(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 503(b), for violating Section 333 of the Act, 47 U.S.C. § 333, and Section 97.101(d) of the Commission's rules, 47 C.F.R. § 97.101(d). For the reasons noted below, the Bureau reduces the monetary forfeiture to \$500.

II. BACKGROUND

2. On April 2, 1993, between 7:06 p.m. and 7:11 p.m., Petitioner transmitted signals on amateur radio frequencies 147.27 MHz from amateur radio station WB5LOC. Petitioner used these signals to interfere with the communications of other amateur operators. Based on transcripts made from a recording of these transmissions, the New Orleans Office issued Petitioner a Notice of Apparent Liability (NAL) in the amount of \$2,000 on September 10, 1993.

3. Petitioner responded to the NAL, arguing that he never willfully, deliberately, or repeatedly caused interference to other amateur radio stations. In addition, Petitioner claims he was not responsible because someone linked his signals from another frequency over to the frequency on which his transmission was recorded. On November 5, 1993, the New Orleans Office issued a Notice of Forfeiture (NOF) for \$2,000. On reconsideration, Petitioner again claims that someone else is responsible for linking his transmissions from another frequency. However, he also states that he believes he was receiving interference and that he does not believe he was interfering with any other amateur.

III. DISCUSSION AND CONCLUSION

4. As an initial matter, we note that, in assessing the forfeiture amount, the New Orleans Office followed the forfeiture guidelines established in the Commission's *Policy Statement, Standards for Assessing Forfeitures*, (Policy Statement), 8 FCC Rcd 6215 (1993). On July 12, 1994, the Court of Appeals for the D.C. Circuit vacated the forfeiture guidelines. *United States Telephone Assn. v. FCC*, 28 F.3d 1232 (D.C. Cir. 1994). On reconsideration, the Bureau has

reassessed the amount pursuant to the statutory guidelines set forth in Section 503 of the Act, 47 U.S.C. § 503(b)(2)(D). In particular, Section 503(b) of Act requires that the Commission "take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require." 47 U.S.C. § 503(b)(2)(D).

5. Turning now to Petitioner's arguments, we first note that the determination that Petitioner willfully or maliciously interfered with amateur communications is based on transcripts of his transmissions that provide sufficient evidence upon which to conclude that Petitioner violated Section 97.101(d) of the rules. The transcripts reveal that, at approximately 7:06 p.m. on April 2, 1993, Petitioner began transmitting over communications in progress on a directed net on frequency 147.27 MHz. Essentially, Petitioner insisted that he was going to talk, whether recognized or not, and stated that no other station could tell him when he could talk. Petitioner's repeated transmission over net operations constituted willful or malicious interference in violation of Section 97.101(d). With respect to Petitioner's argument that someone else linked his transmissions over from another frequency, we note that the content of Petitioner's transmissions demonstrate that he was aware that his transmissions were being broadcast to a net, which convened Friday evenings at 7:00 p.m. Petitioner's transmissions also indicate that he was aware he was causing interference to communications of other stations. Therefore, it is clear that the Petitioner could have stopped transmitting at any time. In these circumstances, Petitioner's claim that some other party may have been responsible for the interference is without merit.

6. We have reconsidered the monetary forfeiture amount in this case, in accordance with the statutory factors set forth in Section 503(b) of the Act, 47 U.S.C. § 503(b)(2)(D). Recognizing the serious problem of willful or malicious interference to communications on amateur radio frequencies, taking into account congressional interest in this problem, *see* H.R. Rep. 552, 103d Cong., 2d Sess. 40 (1994), and given the evidence in this case demonstrating that Petitioner's actions could not in any way be considered accidental or unintentional, we conclude that the appropriate forfeiture amount is \$500. In this particular case, the duration of Petitioner's transmissions as recorded and transcribed do not warrant imposition of a higher fine.

IV. ORDERING CLAUSES

7. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Sections 1.80 and 1.106 of the Rules, 47 C.F.R. §§ 1.80, 1.106, the petition for reconsideration is GRANTED in part and the monetary forfeiture is REDUCED. Petitioner may file an application for review of this decision within thirty (30) days pursuant to Section 1.115 of the rules. 47 C.F.R. § 1.115.

8. IT IS FURTHER ORDERED that Mr. John B. Genovese must pay the forfeiture amount of five hundred dollars (\$500) within thirty (30) days of receipt of this Order. Payment may be made by check or money order

payable to the Federal Communications Commission.¹
Please place NAL/Acct. No. 315OR0004 on the remittance
and mail to:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

9. IT IS FURTHER ORDERED that a copy of this
Order shall be sent by certified mail, return receipt re-
quested to John B. Genovese.

FEDERAL COMMUNICATIONS COMMISSION

Beverly G. Baker
Chief, Compliance and Information Bureau

¹ Requests for installment plans should be mailed to: Chief,
Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W.,
Washington, D.C. 20554. Payment of the forfeiture in install-
ments may be considered as a separate matter in accordance
with Section 1.1914 of the Commission's rules.